IN THE HIGH COURT OF UTTARANCHAL AT

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WRIT PETITION NO. 7100 (SS) OF 2001

U.P. State Road Transport Corporation.
Through Regional Manager, Dehradun,
District Dehradun. .....Petitioner.

Versus

1. Labour Court Uttar Pradesh,
   Dehradun, District-Dehradun.
2. Birendra Bhandari, Authorised Representative,
   U.P.S.R.T.C. Workers Union, Local Bus, Stand Dehradun.

30.11.2005

Hon'ble Rajesh Tandon, J.

Heard Sri B.D. Kandpal, learned counsel for the petitioner and Sri M.C. Pant, learned counsel for the respondent no.2.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 20th August, 2001 (Annexure 1 to the writ petition).

Brief facts giving rise to the present petition are that the respondent no. 2 preferred an application under Section 33 (C) (2) of Industrial Disputes Act, 1947 (***hereinafter referred to as the Act***) for an order of payment of alleged arrears of difference of salary arose out of implementation of the recommendation of the Vth Pay Commission to the petitioner department along with the amount claimed as arrears. Against the said application of respondent no.2, the petitioner filed a Written Statement before the respondent no.1. A preliminary objection was raised by the petitioner corporation regarding the maintainability of the application under Section 33 (C) (2)

of Industrial Disputes Act, 1947 presented by respondent no. 2 on behalf of the persons mentioned in the schedule attached as Annexure 3 to the writ petition.

The Labour Court on 20.08.2001 passed an order on the said application directing the petitioner to pay a certain amount to the workman/respondent no.2.

Learned counsel for the petitioner has submitted that the recommendation of the Vth Pay Commission regarding its applicability in public sector corporation including the petitioner corporation was made applicable by the Government Order No. 2837/30.2.1998/91 T.C. 11, dated 08.01.1997 w.e.f. 01.01.1996.

For the implementation of the recommendation of Vth Pay Commission in the petitioner corporation, the Government has further carved out the plan and direction in Government order No. 185/30.2.99-34/91 T.C. 111, dated 24th Feb. 1999 through its Paribahan Anubhag by which the Managing Director has been directed to implead the recommendation of the Vth Pay Commission according to directions contained in this Government order.

Learned counsel for the petitioner has further submitted that regarding the payment of arrears of salary arose out as a result of the implementation of the recommendation of Vth Pay Commission since 01.01.1996 to 31.12.1998 and arrears of Dearness Allowance since 01.07.1996, 01.01.1997 and 01.07.1997, 01.01.1998 and 01.07.1998 to 31.12.1998, a further direction was issued to the effect that a separate plan would be made by the management of petitioner corporation according to its paying capacity and would be payable accordingly.

It has further been submitted that from a long time, the corporation has been running into losses due to which the

progressive losses has been mounted to almost Rs. 500 crores. In addition of aforesaid losses, the immediate liabilities of the corporation on account of payment of employees provident fund, passenger tax, L.I.C., pension, gratuity etc., is more than Rs. 490 crores. One of the main reasons for the above fact is that almost 50 per cent of the corporation buses have become over aged and to fit to be played due to which the load factor of the operative buses has gone down and the productivity of the outcome of the income has also been reduced considerably.

Further, the State Government has also shown its total inability to provide any financial assistance to the petitioner corporation and as the corporation is already running in loss, the financial position of the petitioner department is very grim and not in a position to generate immediate funds out of its own income to meet out the sudden huge burden of payment of balance of salary arose out of the result of the implementation of the recommendation of Vth Pay Commission in petitioner corporation.

Since the government has not issued any direction regarding the framing of the plan for the payment of arrears of balance of salary due to implementation of the Vth Pay Commission, as such no final policy has yet not been decided.

Learned counsel for the petitioner has submitted that according to the direction of the government order dated 24th February, 1999, the fixation of the salary of the employees of the petitioner corporation has been determined by the petitioner corporation but the payment thereof since 01.01.1996 to 31.12.1998 has not been made so far, but as soon as the financial position of the petitioner corporation improves or it receives financial assistance from the State Government and direction regarding carving out the plan for the payment

thereof, the same shall be made accordingly. The salary as revised according to the implementation of recommendation of the Vth Pay Commission is being paid to the employees of the petitioner corporation since 01.01.1999. Inspite of the acute financial crises the petitioner corporation is making payment according to a plan carved out vide its resolution No. 2553/99 and thereafter issued vide Head Quarters Circular No. 186 CENT/G/99/592 Nigam/97, dated 05.03.1999.

It has further been submitted that the Dehradun region of the petitioner corporation has already paid a sum of Rs. 2,13,86,675.00 to its employees.

Learned counsel for the petitioner has submitted that the learned Labour Court has not considered the apparent facts and passed the impugned order and direction without application of mind and thus the impugned order dated 17.07.2001 passed in Misc. Case No. 203 of 2001 Birendra Bhandari Vs. U.P.S.R.T.C., Dehradun is liable to be quashed by this Hon'ble Court.

While entertaining the writ petition following order was passed on 12.12.2001:-

"*Issue notice to the respondents returnable within four weeks calling for counter affidavits.*

List after four weeks.

In the meantime, operation of impugned order dated 20.08.2001 passed in Misc. Case No. 203 of 2001, contained in Annexure No. 1 to the writ petition shall remain stayed till the next date of listing.

However, it is made clear that the petitioner-U.P. State Road Transport Corporation shall make effort to clear off all the dues w.e.f. 01.01.1996 according to recommendation of 5th Pay Commission as per Govt. Order dated 24.2.1999, which

was adopted by the policy decision dated 05.3.1999 of the U.P State Road Transport Corporation."

Both the parties have agreed that they will comply the order passed on 12th December, 2001 and shall consider to clear all the dues by passing the appropriate order for the payment with effect from 1st January, 1996 as per Govt. Order dated 24.02.1999, which was adopted by the policy decision of the U.P.S.R.T.C.

In view of the aforesaid observations, the writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

30.11.2005
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